U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31658305

Date: JUL. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a biomedical engineer researcher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner filed this petition in February 2023. He is presently engaged as a staff scientist specializing in biomedical research at a university located in Missouri and intends to continue pursuing his career there. In 2019, he obtained a Ph.D. in biochemical engineering from a university abroad.

Because the Petitioner has not claimed or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met three of those criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), scientific accomplishments of major significance under 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). Before the Director and on appeal the Petitioner does not assert, nor does the record establish that he has met any other criteria.

The Director denied the petition, concluding the record did not demonstrate he warranted favorable consideration in a final merits determination. As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility.

On appeal, the Petitioner argues the Director's decision "presented a nonspecific, boilerplate disclaimer that the [final merits determination] was based on the 'totality of the record,' the structure of the final merits determination suggests otherwise." The Petitioner alleges that since the Director organized his final merits discussion of the evidence in a sequential order similar to when he reviewed the evidence to determine that he met the plain language of three criteria, that he erred by "isolat[ing] that evidence and did not collectively consider it in determining that he did not meet the regulatory definitions for extraordinary ability at 8 C.F.R. § 204.5(h)(2), (3). Specifically, the Petitioner contends the Director failed to correctly analyze his testimonial letters, publication record, citation history, notable citations by others, patent applications, research funding, his academic and experiential credentials, and his peer review of the work of others.

We have reviewed the Petitioner's initial submission, his response and additional documentation from the Director's request for evidence (RFE), the Director's decision, the Petitioner's appeal brief, including the testimonial letters that the Director considered in denying the petition which were resubmitted on appeal. We do not concur with the Petitioner's contentions, and we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration " to the case). Here, the decision reflects the Director thoroughly reviewed the record and correctly and sufficiently articulated reasons why the Petitioner's evidence and assertions of eligibility fell short in demonstrating that he meets the requirements for classification as an individual with extraordinary ability in the sciences.

For example, relating to the Petitioner's service as a peer reviewer of the work of other scientists in the final merits determination, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.[1] In evaluating this evidence, the Director acknowledged that the Petitioner had performed work as a peer reviewer of manuscripts submitted by other scientists to scientific journals from 2020 to 2022 but explained that the record did not sufficiently show how his judging experiences compared to others performing similar work, or how the quantity or quality of his review work stands out from his peers. On appeal, the Petitioner does not specifically address the Director's concerns about the probative value of his peer review evidence in the denial. *See Matter of Chawathe,* 25 I&N Dec. at 376.

Rather, he asserts that he is not required to show that his peer review work "alone" must meet the extraordinary ability definition but that such evidence must be considered along with the other evidence in totality. Based on our review of the evidence and the Director's decision we conclude that the Director thoroughly examined and considered the submitted documentation; he discussed various aspects of the evidence individually, but collectively considered the entire record to ultimately determine that the Petitioner is not an individual of extraordinary ability. To determine whether a

[1] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe, supra.* While the Petitioner may disagree with aspects of the Director's analysis of the evidence, he has not sufficiently demonstrated that the Director failed to consider the record under the preponderance of the evidence standard, or that he otherwise erred as a matter of law or policy in denying the petition.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field. The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.